

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

NELSON BEFITELE, State of)	CIVIL NO. 06-00366 ACK-KSC
Hawaii, Director of Labor)	
and Industrial Relations,)	FINDINGS AND
)	RECOMMENDATION TO REMAND
Plaintiff,)	ACTION
)	
vs.)	
)	
GLOBAL HORIZONS,)	
INCORPORATED, a California)	
corporation registered to)	
do business in Hawaii,)	
)	
Defendant.)	
_____)	

FINDINGS AND RECOMMENDATION TO REMAND ACTION

Plaintiff Nelson Befitel, State of Hawaii,
Director of Labor and Industrial Relation's Motion to
Remand Civil Action Back to State District Court
("Motion"), was heard on September 13, 2006 before the
Honorable Kevin S.C. Chang. James A. Stanton appeared
on behalf of Defendant Global Horizons, Inc.
("Defendant"); Deputy Attorney General Gary S. Ige
appeared on behalf of Plaintiff Nelson Befitel

("Plaintiff"). The Court, having reviewed the records and files of this case and having heard and considered the arguments of counsel, hereby FINDS as follows:

1. Plaintiff's claims are in the nature of assumpsit because Plaintiff seeks to collect a sum certain from Defendant.

2. Plaintiff, the Director of the Department of Labor and Industrial Relations, brought this action pursuant to section 383-71(a), Hawaii Revised Statutes and the State of Hawaii is the real party in interest.

3. Plaintiff is not a separate political subdivision and is not like a county or municipality, but instead is acting as an arm of the State of Hawaii.

4. The State of Hawaii is not a citizen for purposes of diversity.

Accordingly, pursuant to the U.S. Supreme Court holding in Moor v. County of Alameda, 411 U.S. 693 (1973), and 28 U.S.C. section 1447(c), the Court FINDS and RECOMMENDS that Plaintiff's Motion be GRANTED as the Court does not have subject matter jurisdiction in this case.

IT IS SO FOUND AND RECOMMENDED.

Dated: Honolulu, Hawaii, September 22, 2006.




Kevin S.C. Chang
United States Magistrate Judge

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RECOMMENDATION TO REMAND ACTION